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No. 82-1511

In the Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF CALIFORNIA, ET AL., CROSS-PETITIONERS

v.

JAMES G. WATT, ET AL.

ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE FEDERAL CROSS-RESPONDENTS

REX E. LEE
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Respondents in Nos. 82-1326 and 82-1327 have filed a "conditional" cross-petition seeking review of the court of appeals' explication (Pet. App. 19a-23a [1]) of the statutory requirement that federal activities be consistent "to the maximum extent practicable" with approved state coastal zone management programs (see Section 307(c)(1) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(1)).

It is clear that the court of appeals felt obliged to give content to the phrase "maximum extent practicable" only because it concluded that outer continental shelf (OCS) lease sales are federal "activities directly affecting the coastal zone" within the meaning of the CZMA. Should this Court rule, in Nos. 82-1326 and 82-1327, that the Ninth

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[1] Pet. App. refers to the appendix to the petition in No. 82-1326.

Circuit erroneously interpreted the phrase "directly affecting the coastal zone," the remainder of the Ninth Circuit's decision would be of no consequence to cross-petitioners and would not require review by this Court. In other words, if the Court were to reverse the Ninth Circuit's construction of the underlying statutory terms, there would be no occasion to examine the manner in which that discarded interpretation should be implemented.

On the other hand, should the Court be inclined to agree with the lower court's basic construction of Section 307(c)(1) in the context of OCS lease sales, it would be logically appropriate for the Court to examine the practical consequences of that decision, just as the Ninth Circuit did. Accordingly, we do not oppose the granting of the "conditional" cross-petition.

We do not oppose the granting of the "conditional" cross-petition for a writ of certiorari, along with the petitions for writs of certiorari in Nos. 82-1326 and 82-1327.

Respectfully submitted.

REX E. LEE
Solicitor General

APRIL 1983

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